

STATE OF INDIANA
OFFICE OF THE SECRETARY OF STATE
SECURITIES DIVISION

FILED
FEB 23 1998

IN THE MATTER OF:

ORDER NO. 98-0063-AO

RULE TO ESTABLISH RULES AND PROCEDURES
TO BE APPLIED TO MOTIONS FOR SUMMARY JUDGMENT

ORDER ADOPTING 710 IAC 1-19-13 TO ESTABLISH RULES
AND PROCEDURES TO BE APPLIED TO MOTIONS FOR SUMMARY JUDGMENT

Comes now Bradley W. Skolnik, Indiana Securities Commissioner, and pursuant to the authority granted under IC 23-2-1-15, finds as follows:

1. The Indiana Securities Division caused to be published in the November 1, 1997 edition of the Indiana Register (21 Ind. Reg. 727 [1997]), a proposed rule adding 710 IAC 1-19-13 to establish rules and procedures to be applied to motions for summary judgment filed in proceedings before the Indiana Securities Division.

2. The Indiana Securities Division caused to be published on November 1, 1997, a notice in a newspaper of general circulation in Marion County, to wit: The Indianapolis Star and News, describing the proposed rule and disclosing the date, time and location of a public hearing regarding the rule.

3. A public hearing in regard to the proposed rule was held on November 25, 1997 at 10:00 a.m. at the Office of the Secretary of State, Securities Division, 302 West Washington Street, Room E111, Indianapolis, Indiana.

4. The Securities Commissioner hereby finds that the proposed rule (710 IAC 1-19-13) should be adopted in the same form as that provided in LSA Document No. 97-246 published in the November 1, 1997 edition of the Indiana Register (21 Ind. Reg. 727 [1997]).

IT IS THEREFORE ORDERED that the rule (710 IAC 1-19-13) adding 710 IAC 1-19-13 to establish rules and procedures to be applied to motions for summary judgment filed in proceedings before the Securities Division is ADOPTED.

IT IS FURTHER ORDERED AND DIRECTED that the rule (710 IAC 1-19-13) establishing rules and procedures to be applied to motions for summary judgment in proceedings before the Securities Division attached hereto be submitted to the Attorney General and the Governor of Indiana for their approval as required under IC 4-22-2.

ORDERED at Indianapolis, Indiana, this 23rd day of February, 1998



SUE ANNE GILROY
SECRETARY OF STATE

A handwritten signature in dark ink, appearing to read 'Bradley W. Skolnik', written in a cursive, flowing style.

BRADLEY W. SKOLNIK
INDIANA SECURITIES COMMISSIONER

TTTLE 710 SECURITIES DIVISION

FINAL RULE
LSA DOCUMENT #97-246(F)

DIGEST

Adds 710 IAC 1-19-13 to establish rules and procedures to be applied to motions for summary judgment filed in proceedings before the securities division. Effective 30 days after filing with the secretary of state.

710 IAC 1-19-13

SECTION 1. 710 IAC 1-19-13 IS ADDED TO READ AS FOLLOWS:

710 IAC 1-19-13 Summary judgment

Authority: IC 23-2-1-15

Affected: IC 23-2-1-16; IC 23-2-1-17.1

Sec. 13. (a) A party may, at any time fifteen (15) days after the commencement of an action, move for a summary judgment in the party's favor as to all or any part of the issues in a proceeding. The motion may be supported with affidavits or other evidence permitted under this section and must set forth specific facts showing that there is not a genuine issue of fact in dispute.

(b) The motion and any supporting affidavits shall be served in accordance with the Indiana Rules of Trial Procedure. An adverse party shall have thirty (30) days after service of the motion to serve a response, any opposing affidavits, or other evidence. The commissioner shall conduct a hearing on the motion that shall be held not less than ten (10) days after the time for filing the response. The commissioner may direct the parties to give oral argument on the motion. The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, testimony, or other documents, if any, show that a genuine issue as to any material fact does not exist

and that the moving party is entitled to a judgment as a matter of law. A summary judgment may be rendered upon fewer than all the issues or claims (such as the issue of penalties alone) although there is a genuine issue as to a violation of law or liability, as the case may be. A summary judgment upon fewer than all the issues involved in a proceeding or with respect to fewer than all the claims or parties is not a final order. The commissioner shall designate the issues or claims upon which the commissioner finds no genuine issue as to any material facts. Summary judgment may not be granted as a matter of course because the opposing party fails to offer opposing affidavits or other evidence, but the commissioner shall make a determination from the affidavits and testimony offered upon the matters placed in issue by the pleadings or the evidence. If it appears from the affidavits or other evidence, of a party opposing the motion, that the party cannot for reasons stated present by affidavit or other evidence facts essential to justify the party's opposition, the commissioner shall make any order that is just.

(c) If, on motion under this section, no order is rendered upon the whole case or for all the relief asked and a hearing is necessary, the commissioner at the hearing on the motion, by examining the pleadings or the evidence before the commissioner and by interrogating counsel, shall, if practicable, ascertain what material facts exist without substantial controversy and what material facts are actually and in good faith controverted. The commissioner shall thereupon make an order specifying the facts that appear without substantial controversy, including the extent to which the amount of damages or other relief is not in controversy, and directing further proceedings in the action as are just. Upon the hearing of the action, the facts specified are established, and the hearing shall be conducted accordingly.

- (d) Supporting and opposing affidavits shall:
- (1) be made on personal knowledge;
 - (2) set forth facts that are admissible in evidence; and
 - (3) show affirmatively that the affiant is competent to testify to the matters stated therein.

(e) The commissioner may permit affidavits to be supplemented or opposed by:

- (1) depositions;
- (2) answers to interrogatories;
- (3) further affidavits;
- (4) testimony of witnesses; or
- (5) other documents.

(f) If a motion for summary judgment is made and supported under this section, an adverse party may not rely upon the mere allegations or denials made in the adverse party's pleadings as a response to the motion. The adverse party shall respond to the motion with affidavits or other evidence permitted under this section and set forth specific facts showing that there is a genuine issue in dispute. If the adverse party does not respond as required by this subsection, the commissioner may enter summary judgment against the adverse party. (Securities Division; 710 IAC 1-19-13)